

SAN DIEGO REGIONAL WATER QUALITY CONTROL BOARD

[PROPOSED] HEARING PROCEDURE
FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT
NO. R9-2009-0026
ISSUED TO
THE COUNTY OF RIVERSIDE

SCHEDULED FOR MARCH 10, 2010

PLEASE READ THIS HEARING PROCEDURE CAREFULLY. FAILURE TO COMPLY WITH THE DEADLINES AND OTHER REQUIREMENTS CONTAINED HEREIN MAY RESULT IN THE EXCLUSION OF YOUR DOCUMENTS AND/OR TESTIMONY.

Background

The Assistant Executive Officer of the San Diego Regional Water Quality Control Board (Regional Board) has issued an Administrative Civil Liability (ACL) Complaint pursuant to California Water Code Section 13323 against the County of Riverside ("Discharger") alleging that it has violated Order No. R9-2004-001, as described with particularity in the attached Complaint. The Complaint proposes that administrative civil liability in the amount of \$612,591 be imposed as authorized by Water Code Section 13385. A hearing is currently scheduled to be held before the Regional Board during its March 10, 2010 meeting.

Purpose of Hearing

The purpose of the hearing is to consider relevant evidence and testimony regarding the ACL Complaint. At the hearing, the Regional Board will consider whether to issue an administrative civil liability order assessing the proposed liability, or a higher or lower amount, or reject the proposed liability. The public hearing on March 10, 2010 will commence at 9 a.m. or as soon thereafter as practical, or as announced in the Regional Board meeting agenda. The meeting will be held at the San Diego Regional Water Quality Control Board, 9174 Sky Park Court, Suite 100, San Diego, CA 92123. An agenda for the meeting will be issued at least ten days before the meeting and posted on the Regional Board's web page at www.waterboards.ca.gov/sandiego. The agenda will include the final hearing date and location, and estimated start time for the hearing.

Hearing Procedures

The hearing will be conducted in accordance with this hearing procedure. This hearing procedure has been pre-approved by the Regional Board's Advisory Team in model format, but the Advisory Team may modify the procedure on its own or at the request of any party. A copy of the general procedures governing

adjudicatory hearings before the Regional Board may be found at Title 23 of the California Code of Regulations, Section 648 et seq., and is available at <http://www.waterboards.ca.gov> or upon request. In accordance with Section 648, subdivision (d), any procedure not provided by this Hearing Procedure is deemed waived. Except as provided in Section 648 and herein, subdivision (b), Chapter 5 of the Administrative Procedures Act (commencing with Section 11500 of the Government Code) does not apply to this hearing.

THE PROCEDURES AND DEADLINES HEREIN MAY BE AMENDED BY THE ADVISORY TEAM IN ITS DISCRETION. **ANY OBJECTIONS TO THE HEARING PROCEDURE MUST BE RECEIVED BY THE REGIONAL BOARD'S ADVISORY TEAM BY DECEMBER 20, 2009, OR THEY WILL BE WAIVED.** FAILURE TO COMPLY WITH THE DEADLINES AND REQUIREMENTS CONTAINED HEREIN MAY RESULT IN THE EXCLUSION OF DOCUMENTS AND/OR TESTIMONY.

Hearing Participants

Participants in this proceeding are designated as either "parties" or "interested persons." Designated parties to the hearing may present evidence and cross-examine witnesses and are subject to cross-examination. Interested persons generally may not submit evidence, cross examine witnesses, or be subject to cross examination, but may present policy statements. Policy statements may include comments on any aspect of the proceeding, but may not include evidence (e.g., photographs, eye-witness testimony, monitoring data). Both designated parties and interested persons may be asked to respond to clarifying questions from the Regional Board, staff or others, at the discretion of the Regional Board.

The following participants are hereby designated as parties in this proceeding:

- (1) Regional Board Prosecution Team
- (2) County of Riverside

Requesting Designated Party Status

Persons who wish to participate in the hearing as a designated party must request party status by submitting a request in writing (with copies to the existing designated parties) so that it is received by 5 p.m. on December 30, 2009 by Advisory Team Attorney Catherine Hagan at chagan@waterboards.ca.gov. The request shall include an explanation of the basis for status as a designated party (e.g., how the issues to be addressed in the hearing and the potential actions by the Regional Board affect the person), the information required of designated parties as provided below, and a statement explaining why the party or parties designated above do not adequately represent the person's interest. Any

opposition to the request must be received by the Advisory Team, the person requesting party status, and all parties by 5 p.m. on January 8, 2010. The parties will be notified by 5 p.m. on December 29, 2009 in writing whether the request has been granted or denied.

Primary Contacts

Advisory Team:

David Gibson, Executive Officer
9174 Sky Park Court, Suite 100
San Diego, CA. 92123-4340
dgibson@waterboards.ca.gov

Eric Becker, Senior Water Resource Control Engineer
9174 Sky Park Court, Suite 100
San Diego, CA 92123-4340
ebecker@waterboards.ca.gov

Catherine Hagan, Senior Staff Counsel
9174 Sky Park Court, Suite 100
San Diego, CA. 92123-4340
chagan@waterboards.ca.gov

Prosecution Team:

Michael McCann, Assistant Executive Officer
9174 Sky Park Court, Suite 100
San Diego, CA. 92123-4340
mmcann@waterboards.ca.gov

Mayumi Okamoto, Staff Counsel
1001 I Street, 16th Floor
Sacramento, CA 95814
mokamoto@waterboards.ca.gov

Christina Arias, Water Resource Control Engineer
9174 Sky Park Court, Suite 100
San Diego, CA. 92123-4340
carias@waterboards.ca.gov

Discharger:

David Huff, Deputy County Counsel
County of Riverside

3535 Tenth Street, Suite 300
Riverside, CA 92501
dhuff@co.riverside.ca.us

David Burhenn
Burhenn & Gest, LLP
624 South Grand Avenue, Suite 2200
Los Angeles, CA 90017
dburhenn@burhenngest.com

Michael Shetler, Senior Management Analyst
County of Riverside
4080 Lemon Street, 4th Floor
Riverside, CA 92501
mshetler@rceo.org

Separation of Functions

To help ensure the fairness and impartiality of this proceeding, the functions of those who will act in a prosecutorial role by presenting evidence for consideration by the Regional Board (Prosecution Team) have been separated from those who will provide advice to the Regional Board (Advisory Team). Members of the Advisory Team are: David Gibson, Executive Officer; Eric Becker, Senior Water Resource Control Engineer, Catherine Hagan, Senior Staff Counsel. Members of the Prosecution Team are: Mike McCann, Assistant Executive Officer; David Barker, Supervising Water Resource Control Engineer; Cris Carrigan, Senior Staff Counsel; Mayumi Okamoto, Staff Counsel; Jimmy Smith, Senior Environmental Scientist; Christina Arias, Water Resources Control Engineer; Ben Neill, Water Resources Control Engineer; and Jeremy Haas, Senior Environmental Scientist. Any members of the Advisory Team who normally supervise any members of the Prosecution Team are not acting as their supervisors in this proceeding, and vice versa. Members of the Prosecution Team may have acted as advisors to the Regional Board in other, unrelated matters, but they are not advising the Regional Board in this proceeding. Mr. Carrigan and Ms. Okamoto are attorneys from the Office of Enforcement and do not advise the Regional Board in any capacity. Members of the Prosecution Team have not had any ex parte communications with the members of the Regional Board or the Advisory Team regarding this proceeding.

Ex Parte Communications

The designated parties and interested persons are forbidden from engaging in ex parte communications regarding this matter with members of the Advisory Team or members of the Regional Board. An ex parte contact is any written or verbal communication pertaining to the investigation, preparation or prosecution of the

ACL Complaint between a member of a designated party or interested person on the one hand, and a Regional Board member or an Advisory Team member on the other hand, unless the communication is copied to all other designated parties (if written) or made in a manner open to all other designated parties (if verbal). Communications regarding non-controversial procedural matters are not ex parte contacts and are not restricted. Communications among one or more designated parties and interested persons themselves are not ex parte contacts.

Hearing Time Limits

To ensure that all participants have an opportunity to participate in the hearing, the following time limits shall apply: each designated party shall have a combined 60 minutes to present evidence, cross-examine witnesses (if warranted), and provide a closing statement; and each interested person shall have 3 minutes to present a non-evidentiary policy statement. Participants with similar interests or comments are requested to make joint presentations, and participants are requested to avoid redundant comments. Participants who would like additional time must submit their request to the Advisory Team so that it is received no later than February 18, 2010. Additional time may be provided at the discretion of the Advisory Team (prior to the hearing) or the Regional Board Chair (at the hearing) upon a showing that additional time is necessary.

Submission of Evidence and Policy Statements

The following information must be submitted in advance of the hearing:

1. All evidence (other than witness testimony to be presented orally at the hearing) that the Designated Party would like the Regional Board to consider. Evidence and exhibits already in the public files of the Regional Board may be submitted by reference as long as the exhibits and their location are clearly identified in accordance with Title 23, CCR, Section 648.3.
2. All legal and technical arguments or analysis.
3. The name of each witness, if any, whom the designated party intends to call at the hearing, the subject of each witness' proposed testimony, and the estimated time required by each witness to present direct testimony.
4. The qualifications of each expert witness, if any.
5. (Discharger only) If the Discharger intends to argue an inability to pay the civil liability proposed in the Complaint (or an increased or decreased amount as may be imposed by the Regional Board), the Discharger should submit supporting evidence as set forth in the "ACL Fact Sheet" under "Factors that must be considered by the Board."

The Prosecution Team shall submit twenty (20) hard copies of its information and one electronic copy of the information to Catherine Hagan, Senior Staff Counsel, so that they are received by 5 p.m. on January 18, 2010.

The remaining designated parties shall submit twenty (20) hard copies and one electronic copy of their information to Catherine Hagan, Senior Staff Counsel, so that they are received by 5 p.m. on February 8, 2010.

Any designated party that would like to submit information that rebuts the information previously submitted by other designated parties shall submit 20 copies and one electronic copy of the information to Catherine Hagan, Senior Staff Counsel, so that they are received by 5 p.m. on February 18, 2010. Rebuttal information shall be limited to the scope of the information previously submitted by the other designated parties. Rebuttal information that is not responsive to information previously submitted by other designated parties may be excluded.

If the total amount of information submitted by any party is less than 15 pages, that party may submit the information by email, rather than in writing.

In addition to the foregoing, each designated party shall submit one (1) copy of the above information to each of the other designated parties so that it is received by 5 p.m. on the deadline specified above.

Interested persons who would like to submit written non-evidentiary policy statements are encouraged to submit them to the Advisory Team as early as possible, but no later than February 23, 2010. Interested persons do not need to submit written non-evidentiary policy statements in order to speak at the hearing.

In accordance with Title 23, California Code of Regulations, Section 648.4, the Regional Board endeavors to avoid surprise testimony or evidence. Absent a showing of good cause and lack of prejudice to the parties, the Regional Board may exclude evidence and testimony that is not submitted in accordance with this hearing procedure. Excluded evidence and testimony will not be considered by the Regional Board and will not be included in the administrative record for this proceeding. Power Point and other visual presentations may be used at the hearing, but their content may not exceed the scope of other submitted written material. A copy of such material intended to be presented at the hearing must be submitted to the Advisory Team at or before the hearing for inclusion in the administrative record. Additionally, any witness who has submitted written testimony for the hearing shall appear at the hearing and affirm that the written testimony is true and correct, and shall be available for cross-examination.

Request for Pre-hearing Conference

A designated party may request that a pre-hearing conference be held before the hearing in accordance with Water Code Section 13228.15. A pre-hearing conference may address any of the matters described in subdivision (b) of Government Code Section 11511.5. Requests must contain a description of the issues proposed to be discussed during that conference, and must be submitted to the Advisory Team, with a copy to all other designated parties, as early as practicable.

Evidentiary Objections

Any designated party objecting to written evidence or exhibits submitted by another designated party must submit a written objection to the Advisory Team and all other designated parties so that it is received by 5 p.m. on February 18, 2010. The Advisory Team will notify the parties about further action to be taken on such objections and when that action will be taken.

Evidentiary Documents and File

The Complaint and related evidentiary documents are on file and may be inspected or copied at the Regional Board office at 9174 Sky Park Court, Suite 100, San Diego, CA. 92123-4340. This file shall be considered part of the official administrative record for this hearing. Other submittals received for this proceeding will be added to this file and will become a part of the administrative record absent a contrary ruling by the Regional Board Chair. Many of these documents are also posted on-line at www.waterboards.ca.gov/sandiego. Although the web page is updated regularly, to assure access to the latest information, you may contact Christina Arias, carias@waterboards.ca.gov or (858) 627-3931.

Questions

Questions concerning this proceeding may be addressed to Catherine Hagan, chagan@waterboards.ca.gov or (858) 467-2958.

IMPORTANT DEADLINES

(Note: the Regional Board is required to provide a hearing within 90 days of issuance of the Complaint (Water Code Section 13323). The Advisory Team will generally adhere to this schedule unless the discharger waives that requirement.)

December 10, 2009	Prosecution Team issues ACL Complaint to Discharger and Advisory Team, sends Hearing Procedure to Discharger and Advisory Team, and publishes Public Notice.
-------------------	--

December 20, 2009	Deadline for objections, if any, to proposed Hearing Procedure.
December 30, 2009	Deadline for requests for designated party status.
January 8, 2010	Deadline for oppositions to requests for designated party status.
January 8, 2010	Discharger's deadline for waiving right to hearing.
January 18, 2010	Prosecution Team's deadline for all information required under "Submission of Evidence and Policy Statements,"
January 18, 2010	Advisory Team issues decision on requests for designated party status, if any.
February 8, 2010	Remaining Designated Parties' Deadline for all information required under "Submission of Evidence and Policy Statements."
February 18, 2010	All Designated Parties' deadline for rebuttal information, evidentiary objections, and requests for additional time at the hearing, if any.
February 23, 2010	Interested Persons' deadline for written non-evidentiary policy statements.
March 10, 2010	Hearing.

DRAFT

DAVID W. GIBSON
Executive Officer

DATE